

REMARKS

Claims 1-29 and 31-45 are pending in the application. Claims 22, and 31-36 have been amended; no claims have been added; and claim 30 has been cancelled without prejudice or disclaimer.

In view of the foregoing Amendment and following remarks, allowance of the pending claims is requested.

Information Disclosure Statement

Applicants thank the Examiner for considering the references submitted in the Information Disclosure Statement filed on May 23, 2002, as evidenced by the signed and initialed Form PTO-1449.

Applicants filed a subsequent Supplemental Information Disclosure Statement on February 7, 2005, and respectfully request the Examiner return a signed and initialed Form PTO-1449.

Rejection Under 35 U.S.C. § 102

The Examiner has rejected claim 1 under 35 U.S.C. 102(e) as allegedly being anticipated by International Publication No. WO 01/22725 by Clark ("Clark"). Applicants traverse this rejection because Clark does not disclose each and every feature of the claimed invention.

For example, claim 1 recites, *inter alia*, "*wherein said turnstile identifies one or more network elements in a communication path between said turnstile and said director.*" In the Office Action mailed Nov. 12, 2004 ("Office Action") at page 3, the Examiner alleges that the these features are disclosed by Clark. Applicant's disagree.

At best, the portions of Clark relied upon by the Examiner apparently disclose arrays of clusters organized hierarchically in a subscriber access network. The Examiner has identified set-top-box in Fig. 1 of Clark as purportedly the functional

equivalent of a turnstile. Even with this understanding, the set-top-box does not identify network elements between itself and a director, as recited in claim 1. In fact, Clark is silent with regard to this feature of the invention.

Additionally, claim 1 recites, *inter alia*, "*wherein said director logically connects said turnstile with a particular one of said plurality of participant managers based on said one or more network elements between said turnstile and said director.*" The Examiner alleges that these features are disclosed by Clark. However, Clark fails to disclose a director that logically connects a turnstile or participants with a participant manager based on network elements identified by the participant (or a turnstile thereupon). Clark is silent with regard to at least this feature of the invention. For at least the reasons cited herein, claim 1 is not anticipated by Clark.

Rejections Under 35 U.S.C. §103

The Examiner has rejected claims 1-10 under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,754,699 to Swildens et al. ("Swildens") and Clark. Applicants traverse these rejections for at least the reason that the Examiner has failed to establish a *prima facie* case of obviousness.

Three requirements must be met to establish a *prima facie* case of obviousness under 35 U.S.C. §103(a). The requirements are: (1) the prior art must teach or suggest all the claim's limitations; (2) there must be some suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine reference teachings; and (3) there must be a reasonable expectation of success. MPEP §2142.

Regarding independent claim 1, the Examiner acknowledges that Swildens fails to teach a turnstile installed at and associated with each of the plurality of participants, as recited in claim 1. Apparently, the Examiner relies on Clark to make up for these deficiencies. Applicants submit that there exists no teaching, suggestion, or motivation to modify Swildens to include the teachings of Clark.

Even if the references are properly combinable, the combination of Swildens and Clark does not teach or suggest the features of claim 1. For example, claim 1 recites, *inter alia*, “*wherein said turnstile identifies one or more network elements in a communication path between said turnstile and said director.*” The Examiner alleges that these features are taught by Clark at Fig. 1 (set-top-box STB1), and Swildens at Fig. 1 (object 115 and path 125). Applicants disagree.

The portions of Clark and Swildens relied upon by the Examiner do not teach or suggest a turnstile that identifies one or more network elements in a communication path between the turnstile and a director. At best, the portions of Clark relied upon by the Examiner teach an interface between content providers and a subscriber’s television set. At best, the portions of Swildens relied upon by the Examiner appear to teach simply that a path exists between a traffic management network and a domain name server. Even if the set-top-box taught in Clark were considered a turnstile, and the path (125) and domain name server (115) taught in Swildens were considered one or more network elements, the Examiner has not shown that the set-top-box identifies network elements between itself and a director, as recited in claim 1. Thus, the combination of Clark and Swildens fail to teach or suggest the invention.

Accordingly, the Examiner has not shown that Swildens and Clark, even if properly combined, teach or suggest all the features of claim 1. Thus, the Examiner has not established a *prima facie* case of obviousness for claim 1 and the rejection thereto must be withdrawn.

Claims 2-10 depend from and add features to claim 1. For at least these reasons, these dependent claims are also patentable over the references relied upon by the Examiner.

The Examiner has rejected claims 11-21 under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,505,254 to Johnson et al. (“Johnson”). Applicants traverse these rejections for at least the reason that the Examiner has failed to establish a *prima facie* case of obviousness.

Regarding independent claim 11, the Examiner acknowledges that Johnson fails to teach receiving a message from a sending participant manager at a receiving participant manager where the message includes a level of said sending participant manager, as recited in claim 11. Apparently, the Examiner alleges that it would have been obvious to one of skill in the art to modify the teachings of Johnson to arrive at the features of claim 11. Applicants disagrees.

Nonetheless, even if one having ordinary skill in the art would have modified Johnson as suggested by the Examiner, Johnson still fails to teach or suggest all features of claim 11. For example, claim 11 recites, *inter alia*, “*determining whether said receiving participant manager should be attached in the hierarchy to said sending participant manager based on said level of said sending participant manager and a level of said receiving participant manager...*” The Examiner apparently alleges that the these features are taught by Johnson at col. 11, ll. 55-59 and 60-64. Applicants disagree.

The portions of Johnson relied upon by the Examiner do not teach or suggest determining whether to attach one participant manager to another based on the level of the respective participant managers. Assuming the “routers” in Johnson are functionally equivalent to performance managers recited in claim 11, the passages of Johnson relied upon by the Examiner at best appear to deal with determining attachment of routers by performance measurements, not by the “levels” of the routers.

For example, Johnson teaches “[t]he root router responds by requesting a measurement of online performance...” Furthermore, immediately following the passages relied upon by the Examiner, Johnson teaches: “[i]f...the new router finds that online performance measurement [sic] between the new router and the root router is better than the online performance measurement with respect to each of the root router’s children, the new router attaches itself to the root router.” This passage clearly indicates that online performance measurements, not levels are the basis for router attachment. As such, Johnson does not teach or suggest determining participant manager attachment by the levels of the respective participant managers.

Accordingly, the Examiner has failed to show that Johnson, even when combined with features that are purportedly obvious to one of skill in the art, teach or suggest all the features of claim 11. Thus, the Examiner has not established a *prima facie* case of obviousness for claim 11 and the rejection thereto must be withdrawn.

Claims 12-21 depend from and add features to claim 11. For at least these reasons, these dependent claims are also patentable over the references relied upon by the Examiner.

The Examiner has rejected claims 22-45 under 35 U.S.C. §103(a) as allegedly being unpatentable over Clark, in view of Swildens. Applicants traverse these rejections for at least the reason that the Examiner has failed to establish a *prima facie* case of obviousness.

As set forth above, there exists no teaching, suggestion, or motivation to modify Clark to include the teachings of Swildens. Even if these references are properly combinable, the combination of Clark and Swildens still fails to teach or suggest all of the features of independent claims 22 and 36.

However, solely to expedite prosecution, Applicants have amended claims 22 and 36 to further clarify their patentability over the art relied upon by the Examiner. Because of these clarifying amendments, claims 22 and 36 are clearly distinct over Clark in view of Swildens. Therefore, the rejection of claims 22 and 36 must be withdrawn. Claims 23-29, 31-35, and 37-45 depend from and add features to one of claim 22 or claim 36. For at least these reasons, these dependent claims are also patentable over the references relied upon by the Examiner.


CONCLUSION

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

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Respectfully submitted,

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